

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Approved: 12/18/86



J. Burton Angelle

BOARD MEETING

December 5, 1986

DALE VINET
Chairman

New Orleans, Louisiana

AGENDA

LOUISIANA WILDLIFE AND FISHERIES COMMISSION NEW ORLEANS, LOUISIANA

December 5, 1986

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MINUTES OF MEETING OF
LOUISIANA WILDLIFE AND FISHERIES COMMISSION

December 5, 1986

Chairman Dale Vinet presiding:

Jack Cappel
Don Hines
Mark Roberts
George Gray

Mr. J. Burton Angelle was also present.

The minutes of the meeting of November 7, 1986 were approved with a motion from Mr. Roberts and seconded by Dr. Hines.

The Enforcement Report was given at Thursday's meeting by Winton Vidrine.

The Survey Report was given at Thursday's meeting also by Ron Dugas. During the period of November 1-30, 1986 66 surveys were scheduled, 42 surveys were unable to be done due to bad weather or fishermen unable to meet surveyor. Lease rental collected was \$68,494.92, survey fees collected were \$5,807.50, 46 applications were filed and 19 new leases were issued.

Phil Bowman presented a declaration of emergency for the offshore shrimp season closure. Dr. Cappel made a motion to accept the declaration of emergency, seconded by Mr. Roberts and approved unanimously.

(The full text of the Declaration
is made a part of the record)

Act 494 passed during the 1986 regular session of the Louisiana Legislature provides that the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission may employ the provisions of R. S. 49:953(B) in promulgating rules and regulations relative to shrimp seasons. This was brought about by the fact that the shrimp populations are dynamic and respond rapidly to changing weather conditions. As such only the most recent information on the conditions of shrimp stocks can be used to enact management measures.

Act 570 passed during the 1986 regular session of the Louisiana Legislature amended R. S. 56:497(2) (a) to read "The shrimping season in outside waters may be closed from January 15 to April 15, for such a period of time as deemed appropriate by the Commission."

The Louisiana Wildlife and Fisheries Commission pursuant to the authority granted to it by the Louisiana Legislature in Act 1986, No. 570 hereby closes the shrimping season in all of Louisiana's offshore territorial waters except the area from Bayou Fontanelle west to Caminada Pass where the closure will be for the area of Louisiana's Territorial waters from the inside-outside shrimp line seaward for a distance of 3 miles. The season closure will begin at 12:01 AM on Thursday, January 15, 1987 and continue until 12:00 PM (midnight) Wednesday, April 15, 1987.

Phil Bowman also presented a resolution which gives the Secretary of the Department of Wildlife and Fisheries the authority to set the shrimp season which was unanimously approved.

(The full text of the Resolution
is made a part of the record)

WHEREAS, R. S. 56:497 A. (3) provide that special shrimp season may be set for all or part of Louisiana waters, and

WHEREAS, shrimp populations in inshore waters react dramatically to changing environmental conditions, and

WHEREAS, there is evidence that large white shrimp still remain inshore in Zone 1 after the fall season closes on December 21, and

WHEREAS, the harvest of these shrimp would benefit shrimp fishermen and the Louisiana economy, now

THEREFORE BE IT RESOLVED the Louisiana Wildlife and Fisheries Commission does hereby authorize the Secretary of the Department of Wildlife and Fisheries to set a special shrimp season during the time period between the end of the fall inshore season and January 15, 1987, now

BE IT FURTHER RESOLVED that the Louisiana Wildlife and Fisheries Commission does hereby authorize the Secretary of the Department of Wildlife and Fisheries to set special shrimp seasons for pink and white shrimp prior to the 1987 spring inshore shrimp season when technical data indicate such seasons would be in the best interest of the shrimp industry and the state of Louisiana.

Gerald Adkins presented a Notice of Intent to define Herring-like species. A motion was made by Dr. Cappel, seconded by Dr. Hines and passed unanimously.

(The full text of the Notice of Intent
is made a part of the record)

Notice of Intent

Louisiana Department of Wildlife and Fisheries Louisiana Wildlife and Fisheries Commission

It is the intent of the Louisiana Wildlife and Fisheries Commission to adopt the following terms and language which designates menhaden and herring-like species which may be legally taken with purse seines in Louisiana waters. Those fish designated as menhaden or herring-like species are included in the family Clupeidae (herrings).

Clupeidae-herrings

Blueback herring (*Alosa aestivalis*)
Alabama shad (*Alosa alabamiae*)
Skipjack herring (*Alosa chrysochloris*)
Hickory shad (*Alosa mediocros*)
Ohio shad (*Alosa ohioensis*)
Alewife (*Alosa pseudoharengus*)
American shad (*Alosa sapidissima*)
Finescale menhaden (*Brevoortia gunteri*)
Largescale menhaden (*Brevoortia patronus*)
Yellowfin shad (*Brevoortia smithi*)
Atlantic menhaden (*Brevoortia tyrannus*)
Atlantic herring (*Clupea harengus harengus*)
Pacific herring (*Clupea harengus pallasii*)
Gizzard shad (*Dorosoma cepedianum*)
Threadfin shad (*Dorosoma petenense*)
California round herring (*Etrumeus acuminatus*)
Atlantic round herring (*Etrumeus sadina*)
False pilchard (*Harengula clupeiola*)
Redear sardine (*Harengula humeralis*)
Scaled sardine (*Harengula pensacolae*)
Flatiron herring (*Harengula thrissina*)
Dwarf herring (*Jenkinsia lamprotaenia*)
Pacific thread herring (*Opisthonema libertate*)
Atlantic thread herring (*Opisthonema oglinum*)
Spanish sardine (*Sardinella anchovia*)
Pacific sardine (*Sardinops sagax*)

This authority is granted under R. S. 56:3, 56:5, and 56:313, either wholly or in part.

These terms are established as being universally applied and understood in: A List of Common and Scientific Names of Fishes From the United States and Canada; The American Fisheries Society, special publication No. 12, 1980.

Interested persons may comment or submit written comments until January 6, 1987 at 4:30 p.m., to the following address: J. Burton Angelle, Secretary, Louisiana Department of Wildlife and Fisheries, P. O. Box 15570, Baton Rouge, Louisiana 70895.


J. Burton Angelle
Secretary

Gerald Adkins also presented a Notice of Intent to define waste of fish and related matters. Dr. Cappel made a motion to accept this Notice of Intent, seconded by Mr. Roberts and passed unanimously.

(The full text of the Notice of Intent is made a part of the record)

The Louisiana Wildlife and Fisheries Commission hereby expresses intent to comply with directives of Act 919 by defining excessive killing of fish, defining methods to assign a fair market value to fish and to implement these provisions. Excessive killing shall be defined as "the killing resulting from taking or attempting to take any fish in excess of what the possessor thereof can process, utilize or transport from the fishing grounds. Shrimp and shrimping operations are excluded".

Market value of fish shall be determined by: (1) ascertaining a price per pound from at least three Louisiana fish buying establishments, or (2) ascertaining a price per pound from NMFS Market News Reports, or (3) any other published source of information.

Johnnie Tarver presented a Resolution concerning Rockefeller Refuge Trust Fund. A motion was made by Dr. Hines and seconded by Dr. Cappel which passed unanimously.

(The full text of the Resolution is made a part of the record)

WHEREAS, the Louisiana Department of Wildlife and Fisheries has been managing Rockefeller Refuge since 1920, in compliance with the Deed of Donation, and

WHEREAS, mineral exploration and development has resulted in excess of \$100,000,000 generated and utilized by the State of Louisiana for funding wildlife, health and education programs, and

WHEREAS, the Legislature and Governor demonstrated great foresight in preparation for the days of depleting mineral resources by the institution of the Rockefeller Trust, that is presently functioning as envisioned, and

WHEREAS, the monetary crisis currently affecting budget units has caused consideration of certain dedicated and trust funds for expenditures in other units, and

WHEREAS, reducing or depleting monies contained within the Rockefeller Trust and Protection Fund is a violation of state statute and Memorandum of Agreement with the Rockefeller Foundation/U.S. Fish and Wildlife Service, and

WHEREAS, such a violation would result in severe action by the U. S. Fish and Wildlife Service in compliance with the original Deed of Donation that is considered a binding contract, now

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission strongly urges the Louisiana Legislature and Governor to refrain from utilizing any funds in the Rockefeller Trust, and

BE IT FURTHER RESOLVED, that the Louisiana Legislature and Governor are encouraged to continue support for the maintenance of the Rockefeller Trust and Protection Fund in perpetuity.

Bennie Fontenot presented a Declaration of Emergency concerning a special commercial fishing season in Lake Bruin. This was passed with a motion from Dr. Cappel, seconded by Mr. Roberts.

(The full text of the Declaration
is made a part of the record)

In accordance with the emergency provisions of R. S. 49:953(B), the Administrative Procedures Act, and under the authority of R. S. 56:22, the Louisiana Wildlife and Fisheries Commission hereby establishes a special 83 day commercial fishing season allowing the use of nets in Lake Bruin, Tensas Parish, Louisiana, for the period beginning at sunrise December 8, 1986 and to close at sunset February 28, 1987.

The use of nets in Lake Bruin will be limited to the following:

Freshwater gill nets and trammel nets greater than or having at least a minimum mesh of 3 1/2" bar and 7" stretched.
Freshwater fish seines greater than or having at least a minimum mesh of 2" bar or 4" stretched.

Commercial fishermen will be required to obtain a special permit from the Louisiana Department of Wildlife and Fisheries to fish with nets in Lake Bruin during this special season and will also submit a monthly catch report to the Department.

Net fishing will be permitted during daylight hours only, except that trammel and gill nets can remain set overnight but fish captured may be removed during daylight hours only.

A heavy population of buffalo fishes is presently available for commercial harvest. A resolution by the Tensas Parish Police Jury enacted on November 12, 1986, was submitted to the Louisiana Department of Wildlife and Fisheries requesting a special commercial fishing season to allow commercial fishermen to harvest the buffalo fishes along with other rough and commercial species taken while fishing buffalo. Emergency action is necessary to have this special

season during the period December 8, 1986 - February 28, 1987 in order to minimize conflicts between the net fishermen and the recreational fishermen who utilize heavily this 3,000 acre oxbow lake during the spring and summer months.

The meeting dates and public hearing dates were discussed. February 5-6, 1986 meeting has been changed from Baton Rouge to Alexandria with a public hearing the night of the 5th. There will be a public hearing only on February 19 at 7:00 PM. March 5-6 meeting will be held in Thibodaux with a public hearing the night of the 5th. The April meeting will be set at the January meeting. The May meeting date was set for April 30 and May 1 in New Orleans with a public hearing for shrimp season to be held on April 30 at 10:00 AM.

Hugh Bateman gave a general waterfowl report and Dr. Hines asked about the goose creeping opinion which had not been received at this time.

Mr. Vinet presented Mr. Gray with a plaque. Mr. Gray stated that he will miss everyone and has enjoyed being on the Commission.

The meeting was adjourned.

DECLARATION OF EMERGENCY

Louisiana Wildlife and Fisheries Commission

Act 494 passed during the 1986 regular session of the Louisiana Legislature provides that the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission may employ the provisions of R. S. 49:953(B) in promulgating rules and regulations relative to shrimp seasons. This was brought about by the fact that the shrimp populations are dynamic and respond rapidly to changing weather conditions. As such only the most recent information on the conditions of shrimp stocks can be used to enact management measures.

Act 570 passed during the 1986 regular session of the Louisiana Legislature amended R. S. 56:497(A)(2) (a) to read "The shrimping season in outside waters may be closed from January 15 to April 15, for such a period of time as deemed appropriate by the commission."

The Louisiana Wildlife and Fisheries Commission pursuant to the authority granted to it by the Louisiana Legislature in Act 1986, No. 570 hereby closes the shrimping season in all of Louisiana's offshore territorial waters except the area from Bayou Fontanelle west to Caminada Pass where the closure will be for the area of Louisiana's Territorial waters from the inside - outside shrimp line seaward for a distance of 3 miles. The season closure will begin at 12:01 A.M. on Thursday, January 15, 1987 and continue until 12:00 P.M. (midnight) Wednesday, April 15, 1987.



Mr. Dale Viney
Chairman

RESOLUTION

THE LOUISIANA WILDLIFE AND FISHERIES COMMISSION

WHEREAS R. S. 56:497 A.(3) provide that special shrimp season may be set for all or part of Louisiana waters and,

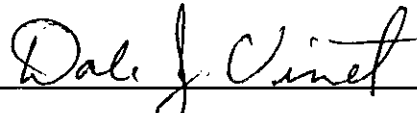
WHEREAS shrimp populations in inshore waters react dramatically to changing environmental conditions and,

WHEREAS there is evidence that large white shrimp still remain inshore in Zone 1 after the fall season closes on December 21 and,

WHEREAS the harvest of these shrimp would benefit shrimp fishermen and the Louisiana economy

NOW THEREFORE BE IT RESOLVED the Louisiana Wildlife and Fisheries Commission does hereby authorize the Secretary of the Department of Wildlife Fisheries to set a special shrimp season during the time period between the end of the fall inshore season and January 15, 1987

BE IT FURTHER RESOLVED that the Louisiana Wildlife and Fisheries Commission does hereby authorize the Secretary of the Department of Wildlife and Fisheries to set special shrimp seasons for pink and white shrimp prior to the 1987 spring inshore shrimp season when technical data indicates such seasons would be in the best interest of the shrimp industry and the state of Louisiana.

A handwritten signature in black ink, reading "Dale J. Vinet", is written over a horizontal line.

Mr. Dale Vinet
Chairman


DECLARATION OF EMERGENCY

Louisiana Wildlife and Fisheries Commission

Act 494 passed during the 1986 regular session of the Louisiana Legislature provides that the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission may employ the provisions of R. S. 49:953(B) in promulgating rules and regulations relative to shrimp seasons. This was brought about by the fact that the shrimp populations are dynamic and respond rapidly to changing weather conditions. As such only the most recent information on the conditions of shrimp stocks can be used to enact management measures.

Act 570 passed during the 1986 regular session of the Louisiana Legislature amended R. S. 56:497(2) (a) to read "The shrimping season in outside waters may be closed from January 15 to April 15, for such a period of time as deemed appropriate by the commission."

The Louisiana Wildlife and Fisheries Commission pursuant to the authority granted to it by the Louisiana Legislature in Act 1986, No. 570 hereby closes the shrimping season in that portion of Louisiana's outside waters (outside waters described in R. S. 56:495 A & B) from the inside-outside shrimp line seaward for a distance of 3 miles. The season closure will begin at 12:01 A.M. on Thursday, January 15, 1987 and continue until 12:00 P.M. (midnight) Wednesday, April 15, 1987.


J. Burton Angelle
Secretary

Notice of Intent

Louisiana Department of Wildlife and Fisheries Louisiana Wildlife and Fisheries Commission

It is the intent of the Louisiana Wildlife and Fisheries Commission to adopt the following terms and language which designates menhaden and herring-like species which may be legally taken with purse seines in Louisiana waters. Those fish designated as menhaden or herring-like species are included in the family Clupeidae (herrings).

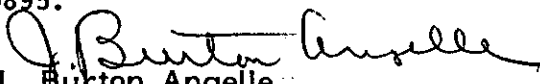
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This authority is granted under R. S. 56:3, 56:5, and 56:313, either wholly or in part.

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Interested persons may comment or submit written comments until January 6, 1987 at 4:30 p.m., to the following address: J. Burton Angelle, Secretary, Louisiana Department of Wildlife and Fisheries, P. O. Box 15570, Baton Rouge, Louisiana 70895.


J. Burton Angelle
Secretary


Notice of Intent

Louisiana Department of Wildlife and Fisheries Louisiana Wildlife and Fisheries Commission

The Louisiana Wildlife and Fisheries Commission hereby expresses intent to comply with directives of Act 919 by defining excessive killing of fish, defining methods to assign a fair market value to fish and to implement these provisions. Excessive killing shall be defined as "the killing resulting from taking or attempting to take any fish in excess of what the possessor thereof can process, utilize or transport from the fishing grounds. Shrimp and shrimping operations are excluded".

Market value of fish shall be determined by: (1) ascertaining a price per pound from at least three Louisiana fish buying establishments, or (2) ascertaining a price per pound from NMFS Market News Reports, or (3) any other published source of information.

Interested persons may submit written comments on the proposed rule until 4:30 p.m., January 5, 1987 to the following address: J. Burton Angelle, Secretary, Louisiana Department of Wildlife and Fisheries, P. O. Box 15570, Baton Rouge, Louisiana 70895.


J. Burton Angelle
Secretary

RESOLUTION ADOPTED BY THE LOUISIANA WILDLIFE AND FISHERIES COMMISSION AT THE
REGULAR MEETING HELD IN BATON ROUGE, LOUISIANA ON FRIDAY, DECEMBER 5, 1986.

WHEREAS, The Louisiana Department of Wildlife and Fisheries has been managing Rockefeller Refuge since 1920, in compliance with the Deed of Donation, and

WHEREAS, Mineral exploration and development has resulted in excess of \$100,000,000 generated and utilized by the State of Louisiana for funding wildlife, health and education programs, and

WHEREAS, The Legislature and Governor demonstrated great foresight in preparation for the days of depleting mineral resources by the institution of the Rockefeller Trust, that is presently functioning as envisioned, and

WHEREAS, The monetary crisis currently affecting budget units has caused consideration of certain dedicated and trust funds for expenditures in other units, and

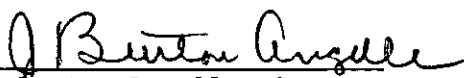
WHEREAS, Reducing or depleting monies contained within the Rockefeller Trust and Protection Fund is a violation of state statute and Memorandum of Agreement with the Rockefeller Foundation/U. S. Fish and Wildlife Service, and

WHEREAS, Such a violation would result in severe action by the U. S. Fish and Wildlife Service in compliance with the original Deed of Donation that is considered a binding contract, and

THEREFORE, BE IT RESOLVED, That the Louisiana Wildlife and Fisheries Commission strongly urges the Louisiana Legislature and Governor to refrain from utilizing any funds in the Rockefeller Trust, and

BE IT FURTHER RESOLVED, That the Louisiana Legislature and Governor are encouraged to continue support for the maintenance of the Rockefeller Trust and Protection Fund in perpetuity.

This is to certify that the above and foregoing is a true copy of the excerpt of the minutes of the meeting of the Louisiana Wildlife and Fisheries Commission held in New Orleans, Louisiana, on Friday, December 5, 1986.


J. Burton Angelle, Sr.
Secretary

DECLARATION OF EMERGENCY

Louisiana Department of Wildlife and Fisheries
Louisiana Wildlife and Fisheries Commission

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedures Act, and under the authority of R.S. 56:22¹/₂, the Louisiana Wildlife and Fisheries Commission hereby establishes a special 83 day commercial fishing season allowing the use of nets in Lake Bruin, Tensas Parish, Louisiana, for the period beginning at sunrise December 8, 1986 and to close at sunset February 28, 1987.

The use of nets in Lake Bruin will be limited to the following:

Freshwater gill nets and trammel nets greater than or having at least a minimum mesh of 3 1/2" bar and 7" stretched.

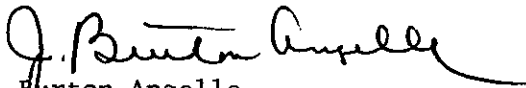
Freshwater fish seines greater than or having at least a minimum mesh of 2" bar or 4" stretched.

Commercial fishermen will be required to obtain a special permit from the Louisiana Department of Wildlife and Fisheries to fish with nets in Lake Bruin during this special season and will also submit a monthly catch report to the Department.

Net fishing will be permitted during daylight hours only, except that trammel and gill nets can remain set overnight but fish captured may be removed during daylight hours only.

A heavy population of buffalo fishes is presently available for commercial harvest. A resolution by the Tensas Parish Police Jury enacted on November 12, 1986, was submitted to the Louisiana Department of Wildlife and Fisheries requesting a special commercial fishing season to allow commercial fishermen to harvest the buffalo fishes along with other rough and commercial

species taken while fishing buffalo. Emergency action is necessary to have this special season during the period December 8, 1986 - February 28, 1987 in order to minimize conflicts between the net fishermen and the recreational fishermen who utilize heavily this 3,000 acre oxbow lake during the spring and summer months.


J. Hurton Angelle
Secretary



J. BURTON ANGELLE, SR.
SECRETARY

DEPARTMENT OF WILDLIFE AND FISHERIES
DISTRICT VIII
400 ROYAL ST.
NEW ORLEANS, LA 70130

EDWIN W. EDWARDS
GOVERNOR

December 1, 1986

COASTAL & MARINE RESOURCES

SURVEY SECTION
03 - 43
ACTIVITY REPORT

NOVEMBER 1, 1986 THRU NOVEMBER 30, 1986

During this period field activity consisted of:

- 66 - Surveys that were scheduled.
- 42 - Surveys that were unable to be done due to bad weather or fishermen unable to meet surveyor.

Surveys that were completed consisted of:

- 17 - Leases that were tied into the monument control system.
- 1 - Applications for new area.
- 6 - 15 year limitations.

Total field activity:

<u>1984</u>	<u>1985</u>	<u>1986</u>	
1187	1355	1482	- Surveys scheduled
715	709	1103	- Surveys performed
398	608	350	- Surveys unable to be done due to bad weather or fishermen unable to meet surveyor.
0	1	2	- Survey where fishermen refused to survey.
3	0	0	- Disputes settled.
70	37	24	- No shows
0	0	3	- Applications cancelled by request.

Office activity during this period:

- \$68,494.92 - Lease rental collected.
- \$ 5,807.50 - Survey fees collected
- 46 - Applications filed
- 19 - New leases issued





J. BURTON ANGELLE, SR.
SECRETARY

DEPARTMENT OF WILDLIFE AND FISHERIES
DISTRICT VIII
400 ROYAL ST.
NEW ORLEANS, LA 70130

EDWIN W. EDWARDS
GOVERNOR

December 1, 1986

COASTAL & MARINE RESOURCES

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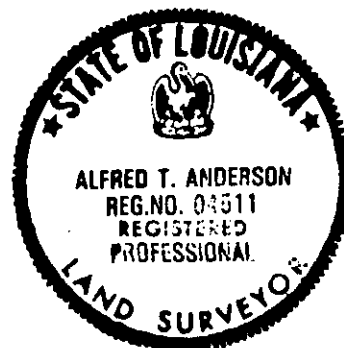
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Office activity during this period:

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AGENDA FOR COMMISSION MEETING

The regular monthly meeting of the Louisiana Wildlife and Fisheries Commission will be held at 10:00 AM on Friday, December 5, 1986 at the Delapost Hotel, 316 Chartres Street, New Orleans.

The following items will be on the agenda:

1. Approval of Minutes of November 7, 1986
2. Offshore Shrimp Season Closure
3. Notice of Intent - Defining Herring-like Species
4. Notice of Intent - Defining Waste of Fish & Related Matters
- X. Notice of Intent - To Establish an Official Endangered Species List for the State of Louisiana
6. Set Date for March Meeting

AGENDA

LOUISIANA WILDLIFE AND FISHERIES COMMISSION NEW ORLEANS, LOUISIANA

December 5, 1986

- 1. Roll Call**
- 2. Approval of Minutes of November 7, 1986**
- 3. Offshore Shrimp Season Closure**
- 4. Notice of Intent - Defining Herring-like Species**
- 5. Notice of Intent - Defining Waste of Fish & Related Matters**
- 6. Closing Trawling for Shrimp - Lake Cataouche - Leon Fonseca**
- 7. Resolution - Rockefeller Refuge**
- 8. Special Commercial Fishing Season - Tensas Parish Police Jury**
- 9. Discussion of Special Shrimp Seasons**
- 10. Set Date for March Meeting**
- 11. Other Business**

AGENDA

LOUISIANA WILDLIFE AND FISHERIES COMMISSION
NEW ORLEANS, LOUISIANA

December 4, 1986

1. Enforcement Report
2. Survey Report
3. Offshore Shrimp Season Closure
4. Notice of Intent - Defining Herring-like Species
5. Notice of Intent - Defining Waste of Fish & Related Matters
6. Closing Trawling for Shrimp - Lake Cataouche -
Leon Fonseca
7. Other Business
8. Special Commercial Fishing Season - Tensas Parish
Police Jury

AGENDA

LOUISIANA WILDLIFE AND FISHERIES COMMISSION NEW ORLEANS, LOUISIANA

December 5, 1986

1. Roll Call
2. Approval of Minutes of November 7, 1986
3. Offshore Shrimp Season Closure
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7. Set Date for March Meeting
8. Other Business
9. Special Commercial Fishing Season - Tensas Parish
Police Jury

November 21, 1986

Mr. J. Burton Angelle, Secretary
Department of Wildlife and Fisheries
P. O. Box 15570
Baton Rouge, LA 70895

Dear Mr. Burton:

We the undersigned are commercial fishermen and seafood dealers from the Parishes of St. Charles and Lafourche. Most of us earn our living from fishing for catfish, blue crabs, baitfish and shrimp.

We would like to urge and request the Louisiana Wildlife and Fisheries Commission to declare Lake Cataouatche a shrimp sanctuary. We are aware that the concept of shrimp sanctuaries is gaining support amongst fisheries managers and we feel that this lake is an ideal candidate for inclusion.

Lake Cataouatche is a shallow brackish-water lake which is difficult for shrimpers to trawl. It receives a heavy influx of baby shrimp which would benefit from being allowed to grow to a larger size. Additionally, trawling causes heavy destruction to stationary fishing gear used by hundreds of softshell crab and catfish fishermen. Lake Cataouache is easily the largest producer of softshell crabs west of the Mississippi River and annually produces hundreds of thousands of pounds of freshwater catfish. Shrimp trawling destroys the fishing equipment of these fishermen using the lake for their livelihood.

We, as a group, would publicly support and initiative on the part of the commission in this direction.

[illegible]

50 CFR Part 20

Migratory Bird Hunting; Criteria and Schedule for Implementing Nontoxic Shot Zones for 1987-1988 and Subsequent Waterfowl Hunting Seasons.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: When consumed by waterfowl, bald eagles and other migratory birds, spent lead shot often produce lead poisoning and death. As lead poisoning is a significant annual mortality factor for certain species of migratory birds that indirectly results from sport harvest of waterfowl, the annual process of deciding whether, where, and how migratory bird hunting will be allowed under the Migratory Bird Treaty Act must take into account where further curtailment of shot deposition is necessary to protect these species from lead shot exposure and the resultant mortality. To eliminate lead poisoning as a major mortality factor in waterfowl, bald eagles, and certain other migratory birds, the Fish and Wildlife Service (FWS) will ban the use of lead shot for hunting waterfowl and coots nationwide by the 1991-1992 season. This final rule describes the mechanism and schedule by which the nationwide ban on the use of lead shot for hunting waterfowl and coots will be implemented.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building—Room 536, Washington, DC 20240 (202/254-3207).

SUPPLEMENTARY INFORMATION: Wildlife biologists and others have known at least for the last 100 years that spent lead shot deposited during hunting can cause sickness and death when ingested by waterfowl. In earlier decades, when waterfowl populations were greater in number, this incidental hunting-related mortality was judged too insignificant to warrant measures to attempt to eliminate the problem.

Increasingly, continental waterfowl populations have come under stress from destruction and degradation of their habitat, periodic adverse weather cycles and disease on crowded migration and wintering habitats. By the 1960's and 1970's it became obvious to wildlife managers that there was a need to find an alternative to lead shot because of its toxicity. In 1976, the Department of the Interior published a Final Environmental Statement (FES-76)

on the proposed use of steel shot for hunting waterfowl in the United States. The action presented at that time sought to limit further deposition of lead shot in areas used by waterfowl in order to eliminate lead poisoning from ingested lead shot as a significant mortality factor among these birds. This action continues to be implemented 10 years after it was first presented.

Since 1976, nontoxic shot has been required for hunting waterfowl at numerous locations throughout the United States. These requirements are now reflected in both State and Federal hunting regulations. In 1985, about 30 percent of the average annual waterfowl harvest in the United States occurred in designated nontoxic shot zones in 33 States. In 1986, about 49 percent of the average annual waterfowl harvest in the United States will occur in nontoxic shot zones in 44 States.

The majority of wildlife managers and many hunters understand the need for conversion to a nontoxic shot in order to maintain waterfowl populations. However, there are those who believe that steel shot (currently the only approved nontoxic shot available) is not the answer, that it will damage their guns and cripple more waterfowl than lead shot. These concerns are true in part. Shotguns with thin-walled barrels or barrels made of soft steel should not be used for firing steel loads. However, modern shotguns available from the major American arms manufacturers and others are safe for use with steel shot. Numerous tests relating to crippling loss with steel shot have produced results as varied as their individual objectives. There is no clear evidence that a greater crippling loss results from use of steel shot.

Criticism about the need to convert to nontoxic shot also centers on the lack of hunter-observed, lead poisoning mortality. This results from the fact that most lead poisoning occurs after the hunting season when waterfowl can feed undisturbed on hunted areas where shot has been deposited recently and the fact that lead poisoning is a slow, debilitating disease that makes its victims susceptible to predation or other diseases. When encountered, these birds are often mistaken for cripples. Although these factors make it difficult to provide absolute numbers of lead poisoned birds, it is known that significant losses are occurring annually across the nation, and they are controllable as an acceptable nontoxic substitute for lead shot is available.

In making the annual decision whether, where, and how migratory bird hunting will be allowed under the terms of the Migratory Bird Treaty Act, as

amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755), the Secretary of the Interior is required to determine the capability of waterfowl and other migratory bird resources to sustain a sport harvest throughout the various portions of their range. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884) requires Federal agencies to conserve endangered species and avoid jeopardizing their continued existence; the Secretary must consider where it is necessary to require nontoxic shot in order to reduce exposure of bald eagles to lead shot in their waterfowl prey. If a determination is made that the use of lead shot must be avoided for the migratory bird hunting to remain in compliance with the requirements of these statutes, the Secretary must implement a program that meets those requirements.

As previously stated, the FWS has implemented a nontoxic shot program since 1976 to alleviate the lead poisoning problem in waterfowl. Only in the past few years, since FES-76 was completed, has it become apparent that lead poisoning from waterfowl hunting is manifesting itself in the endangered and threatened bald eagle populations of the United States. To date, 125 bald eagles have been diagnosed by the FWS' National Wildlife Health Center as dying from lead poisoning; the major source of this lead exposure is believed to be lead pellets embedded in or ingested by hunter-crippled or -killed waterfowl. Accordingly, the FWS has completed a Final Supplemental Environmental Impact Statement (SEIS) on the use of lead shot for hunting migratory birds in the United States, in which a complete review and analysis of the lead poisoning problem in migratory birds is made. Evidence is presented in the Final SEIS that lead poisoning among waterfowl and bald eagles is of sufficient magnitude that a program to ban the use of lead shot for waterfowl and coot hunting nationwide is necessary for the Secretary to comply with statutory requirements.

Information detailing the developing of the Final SEIS strategy to eliminate lead toxicity as a major mortality factor in waterfowl and coots appears in the preamble to the proposed rule for this final rule published in the Federal Register on Friday, June 27, 1986 (51 FR 23444). Information on the justification for selecting this strategy (Alternative VII) has also been set out in the Final SEIS; the June 27, 1986, Federal Register proposed rule for this final rule; and in the Record of Decision (ROD) confirming selection of the preferred alternative and published in the Federal

BATEMAN SOLEAU
HELM PAULUS

Register on August 20, 1986 (51 FR 29673). In compliance with 40 CFR 1505.2, the ROD was signed by the Director, FWS, and the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, on August 11, 1986.

This rule will fully implement the preferred alternative of the Final SEIS by setting criteria and a schedule for establishing nontoxic shot zones for the 1987-1988 waterfowl hunting season and beyond, culminating in a nationwide ban on the use of lead shot by the 1991-1992 hunting season. The decision criteria noted in the amendatory language of this rule (recommended to the FWS by comments of the International Association of Fish and Wildlife Agencies) are similar to those published at 50 FR 30849 and are discussed also in the Final SEIS. The current FWS strategy, utilizing criteria for identifying areas necessary for bald eagle and waterfowl protection, is an integral part of this alternative and will apply for the 1986-1987 waterfowl hunting season (see 51 FR 31429).

Since 1978, the FWS has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the Interior Department Appropriations Act each year since 1978 (Pub. L. 98-473, Section 305). As a consequence of this restriction the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act and, in the case of zones proposed for bald eagle protection, the Endangered Species Act, and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d; 54 Stat. 250).

Summary of Comments on the Proposed Rule

Over 175 comments on the proposed rule have been received; only 46 were received prior to comment period closure. Of those received subsequent to comment period closure, virtually all support FWS action to ban the use of lead shot nationwide by 1991-1992 for hunting waterfowl and coots. All letters have been reviewed for relevancy to this particular proposal and substantive

comments are addressed in this final rule, or elsewhere as noted.

Of the 46 comments received during the comment period, 17 are from State fish and game organizations and the remainder are from national, State, or local conservation/wildlife organizations, a Member of Congress, a waterfowl hunting group, a Flyway Council, and private individuals. States providing comments are AZ, CA, DE, FL, GA, IL, MD, ME, MI, MO, NE, NH, NJ, RI, TX, VT, and WI. One copy of a letter to "State and Federal Fish and Wildlife Administrators" urging observance of the zone conversion schedule in Appendix N of the Final SEIS was received from the Federal Arms Corporation. Overall, 20 letters were in general support of the proposed rule, 22 generally against, 2 had no stated or obvious position, and 2 supported a nationwide lead to steel shot conversion but not as proposed by the FWS. Of the States responding, 11 supported the proposal, 3 States opposed the proposal, 2 States had no stated position for or against, and 1 State supported a conversion but not as proposed by the FWS in this rule. The comments noted below are represented in approximately 15-20 of the 46 letters, but not all cite each and every issue. These comments are not responded to in this final rule as they are similar, if not identical, to comments received from the general public on the proposed rule titled "Zones in which lead shot will be prohibited for waterfowl and coot hunting in the 1986-1987 hunting season" of January 6, 1986 (51 FR 409) and were responded to as a preliminary final rule in Appendix O of the Final SEIS on the use of lead shot for hunting migratory birds in the United States completed in June of 1986 and announced in the Federal Register on June 27, 1986 (51 FR 23443) and July 11, 1986 (51 FR 25249). This preliminary final rule (Appendix O), with comments and responses, was published as a final rule on September 3, 1986 (51 FR 31429). Further, most of the subjects listed are treated in the Final SEIS and referenced accordingly so that the reader may obtain and review scientific studies upon which this final rule action is taken. The list of issues (with the September 3, 1986 (51 FR 31429) 1986-1987 nontoxic shot zone rule issue and/or SEIS reference) is as follows:

- Arguments against the lead shot-lead poisoning connection in waterfowl and bald eagles, including situations involving shooting over fields and over deep water, observers noting absence of carcasses, perceived documentation deficiencies, etc. (see, for example,

Issues 1, 2, 7, and 8 and Chapter III of the SEIS);

- Relative merits of the "hotspots" approach vs. the current phase-in strategy (see, for example, Issue 5 and Chapters II and IV of the SEIS);
- Crippling and shooting performance of lead vs. steel shot (see, for example, Issue 12 and Chapter III, page 86, of the SEIS);
- Cost of steel vs. lead shot and availability of steel shot (see, for example, Issue 14 and Chapter III, page 90, of the SEIS);
- Compatibility of steel shot with weapons and safety (see, for example, Issue 13 and Chapter IV, pages 11-15 of the SEIS);
- Feasibility of implementing a nationwide ban earlier than the 1991-1992 hunting season (see, specifically, page S-3 and Chapter IV of the SEIS);
- General allegations of arbitrariness in FWS' actions to eliminate lead poisoning as a mortality factor in waterfowl and coot (see, for example, Issue 3);
- Enforcement concerns (see, Chapter IV, page 57, of the SEIS);
- Proposed adoption of alternatives which were discussed in the SEIS (see, page S-3 and Chapter IV of the SEIS);
- Proposal that the FWS should redouble efforts to find a suitable nontoxic alternative to lead (see, for example, Issue 14 and Chapter III, page 90, of the SEIS); and
- An argument that the FWS, through this and other actions establishing nontoxic (steel) shot zones, is violating the Stevens amendment to the Interior Department Annual Appropriations Act (see, for example, Issue 22).

Other, specific issues raised by commentators and not previously publicly analyzed by the Service are responded to as follows:

Responses to General Comments on the Proposed Rule

Issue 1: The National Wildlife Federation (NWF) commented that the FWS should promulgate a single, final steel shot regulation (zones) for all years for the reasons that: (a) It will help assure adequate ammunition inventories; (b) it will assist the interpretation and education (I&E) efforts of the States; (c) it will be an affirmative action that will reinforce public confidence in the FWS' intent to phase out lead shot by 1991-92; and (d) "up to the minute biological factors" are not considered in establishing steel shot zones.

Response: The FWS believes that it would be neither appropriate nor time effective to attempt to promulgate one

rule that covers all zones for all hunting years through the nationwide ban year of 1991-1992. "Up to the minute biological factors" may not be a prominent part of the strategy to establish nontoxic shot zones; however, it is quite likely that the zone establishment process leading to a nationwide ban will be a dynamic one. It is anticipated that the acceleration and deferral provisions of this final rule, especially the former, will create some State-by-State deviation from the proposed schedule published in Appendix N of the SEIS. Acceleration and/or deferral within the schedule would necessitate amending the NWF's suggested single, total phase-in encompassing rule on an annual basis, in effect requiring unnecessary and burdensome replication of State and Federal efforts. Further, the Stevens amendment to the Department's annual appropriations act, that requires State concurrence on implementation and enforcement on an annual basis, would be in conflict with such an action. Too, there may yet be future Congressional repeal or other modification of the Stevens Amendment to the Interior Department Annual Appropriations Act that would impact this rulemaking process.

The FWS believes that there is inadequate advance notice within Appendices N and O of the SEIS to facilitate supply of nontoxic shot ammunition in 1986-1987 and in future years, and to allow the States to be effective in their I&E programs. There has been no request by the major American ammunition manufacturers for a single rule to facilitate their distribution of ammunition supplies; their only concern has been for a 12-14 month period over which to plan for yearly distribution.

In light of this final rule and other recent developments, there should remain little doubt what the intentions of the Department and the FWS are in regard to the elimination of lead toxicity as a significant mortality factor in certain migratory birds.

Issue 2: The National Rifle Association of America and the Wisconsin Department of Natural Resources stated that these nontoxic shot restrictions should be placed on shotshells only and, thus, allow the use of lead shot by muzzleloading waterfowl and coot hunters.

Response: The FWS believes that a "fairness" principle should be a primary consideration; lead shot from muzzleloading contributes to the lead poisoning problem. Thus, the FWS will require all waterfowlers using firearms to use nontoxic shot in established

nontoxic shot zones. Further, the FWS believes that it is unnecessary to make this exemption given what is known about pressures that are generated by muzzleloading weapons. However, as with those using shotshells, it is likely not a good safety practice to use firearms with thin-walled barrels. At least one reloading manual provides data on steel shot loading in muzzleloading shotguns; this source acknowledges that the data were developed using a barrel that will accommodate higher than normal pressures (i.e., a pressure barrel) but that this use is a common practice in loading data development.

For this current 1986-1987 hunting year, a contradiction within the regulations, those at 50 CFR 20.108 and those in the "taking" section (§ 20.21), will allow muzzleloading waterfowl hunters to use lead shot. However, the FWS intends to resolve this contradiction in favor of steel shot for 1987 and beyond by amending § 20.21(j) in a separate rulemaking.

Issue 3: The Central Flyway Council, Delaware Department of Natural Resources and Environmental Control, Maine Department of Inland Fisheries and Wildlife, New Jersey Department of Environmental Protection, Rhode Island Department of Environmental Management, Texas Parks and Wildlife Department, and Vermont Department of Fish and Game all expressed in some way concern that counties were not necessarily logical units on which to base nontoxic shot zone establishment.

Response: The FWS agrees that adhering strictly to county boundaries may confuse or otherwise make difficult management and enforcement of nontoxic shot zones. However, maintaining the integrity of the strategy to convert in a systematic and priority manner is of paramount importance. Thus, to accommodate problems where, for example, county boundaries are indistinct and where enforcement may be difficult, a provision has been added in § 20.143 that allows States, at their prerogative, to extend nontoxic shot zones into adjacent counties to complete logical ecological units, or for other reasons. Nonetheless, the minimum unit that must be converted, according to the schedule, will be the county listed for that particular year. This provision is consistent with that allowing acceleration of the schedule.

Issue 4: The Central Flyway Council, Maine Department of Inland Fisheries and Wildlife, Michigan Department of Natural Resources, and Missouri Department of Conservation each expressed a desire to allow a State to move forward to conversion on an

independent schedule or to maintain current zones as status quo until a statewide conversion date could be targeted.

Response: The FWS believes that the acceleration option of this strategy provides sufficient flexibility needed by a State to develop a statewide conversion plan consistent with the national plan. For the purposes of converting areas in priority order, there is a need to preserve the integrity of the strategy that was adopted by the majority of the International Association of Fish and Wildlife Agencies' member States and subsequently recommended to the FWS and selected as the strategy for eliminating lead toxicosis as a major mortality in certain migratory birds.

Issue 5: One commentator stated that the most effective means of obtaining compliance with a ban on lead shot is to place restrictions on ammunition manufacture and import.

Response: The FWS is not authorized to regulate the manufacture of shot, but only the manner and extent of migratory bird hunting. Moreover, the FWS believes that manufacture and import restrictions are not viable means of obtaining compliance with nontoxic shot use in nontoxic shot zones. Lead shot loads in sizes that would be affected are legally used in upland gamebird shooting (pheasants, turkey) and in hunting marshbirds (crane, gallinule, rail) and other wildlife species as well. Thus, it would not be reasonable to simply ban the manufacture or import of certain lead shot sizes such as those larger than 4's or 6's, for example.

Issue 6: One commentator requested clarification of the use of eagle criteria and eagle zoning beyond the 1986-1987 waterfowl hunting season, and the New Jersey Department of Environmental Protection also asked if existing nontoxic shot zones would be eligible for study and deferral.

Response: There is no provision for utilizing eagle criteria for expanding nontoxic shot zones after the 1986-1987 waterfowl hunting season; the expansion of zoning for nontoxic shot use after this season is based only on waterfowl harvest density. Inasmuch as the conversion to nontoxic shot for 1987 and beyond is based on waterfowl harvest density, beginning with the most and ending with the least dense areas, this strategy should also provide a priority protection for bald eagles utilizing lead shot contaminated waterfowl in their food base.

This adopted strategy (51 FR 29673) calls for all established nontoxic shot zones to remain for the 1987-1988 and future waterfowl hunting seasons.

Further, the schedule provides a 2-year lag period between study and deferral for data collection, data synthesis, and reporting of results in a manner that is sensitive to the need for public awareness. It will not be possible to study an area in 1986-1987 for deferral in 1987-1988; the study, analyses, reporting and negotiation aspects would leave insufficient time for publication and scheduling. The SEIS has clearly stated (page II-13) that the schedule has progressed beyond the point in time that 20+ zones would be triggered for monitoring, i.e., they would have had to have been studied in 1985-1986.

Under this new strategy the rules changed sufficiently that areas having met the former criteria but that do not meet current criteria are exempt from conversion, except as per the schedule given in Appendix N of the SEIS. The FWS is discontinuing its Lead Poisoning Monitoring Program activities on Federal refuges.

There is no provision for rescinding nontoxic shot zones in the future as both the FWS and the Department are committed to the newly adopted strategy and schedule for eliminating lead toxicosis in waterfowl and other migratory birds caused by the use of lead shot in waterfowling. Section 20.143 has been changed to reflect that there will be no deferral or rescission of established nontoxic shot zones.

Issue 7: The New Jersey Department of Environmental Protection (NJDEP) requested information on the source of the harvest data used to derive the conversion schedule.

Response: It is assumed that this reference by the NJDEP is to the list of converting counties by year contained in Appendix N of the SEIS that resulted from the schedule in the proposed rule for this final rule. The harvest data per county was obtained from Carney et al. 1983 (Distribution of waterfowl species harvested in States and counties during 1971-1980. U.S. Fish and Wildlife Ser. Spec. Sci. Rpt.—Wildl. No. 254). The county area database, that included both land and water areas, was obtained from the U.S. Bureau of the Census. These data will be used in determining at what point in time a county must convert. The county harvest densities, i.e., the prioritized schedule of counties converting, obtained when using the U.S. Bureau of the Census database may vary from those results obtained when using county area data from other sources.

Issue 8: The Florida Game and Fresh Water Fish Commission suggested that to avoid confusion, inasmuch as "triggered" has been used in the past in a different context, "converted" should

be substituted for that term in § 20.143(d).

Response: Section 20.143(d) of the proposed rule, now (f) of the final rule, has been rewritten accordingly.

Issue 9: The Delaware Department of Natural Resources and Environmental Control has requested that some explanation be made for moving the 3-dead-waterfowl criteria from triggering for monitoring to [triggering for] conversion.

Response: The FWS believes that the 3-dead-bird criterion for converting areas being studied for deferral is a valid determination of an area's potential for lead shot exposure, and, therefore, lead poisoning in waterfowl and coots. The FWS will retain this criterion as a threshold for nondeferral; this is consistent with the way that the selected strategy is presented in the Final SEIS.

As a result of the foregoing public input and other supplementary information, three significant textual changes have been made to the proposed rule. These changes, contained in an expanded § 20.134, are as follows:

- For clarification, it is noted that established nontoxic shot zones may not be monitored for deferral or rescission from conversion in any manner;
- For clarification and to provide flexibility, States may accelerate conversion on less than a county basis for purposes of completing a biological or enforcement/management unit; however, the minimum conversion unit (county) must be adhered to; and
- For clarification, when a county is converted to nontoxic shot status it will be added to the list of nontoxic shot zones contained in § 20.108 and all the existing prohibitions on use of lead shot will apply.

Other changes made in proposed rule are editorially minor in nature.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include

small businesses, organizations or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The FWS believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

As noted above, pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), a Final SEIS on the use of lead shot for hunting migratory birds in the United States has been completed. As previously noted herein, a ROD on the SEIS has been completed as required by 40 CFR 1505.2. Pursuant to the Endangered Species Act, as section 7 consultation was done on the potential impacts of this action on bald eagles and is included in the Final SEIS. These documents are available for public inspection and copying in Room 536 Matomic Building, 1717 H Street NW., Washington, DC 20240, or may be obtained by mail, addressing the Director at the above location.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43

739, as amended, 54 Stat. 1103-04, unless otherwise noted.

2. Subpart M is added to read as follows:

Subpart M—Criteria and Schedule for Implementing Nontoxic Shot Zones for the 1987-1988 and Subsequent Waterfowl Hunting Seasons

Sec.
20.140 Purpose and scope.
20.141 Definitions.
20.142 Applicability.
20.143 Criteria and schedule for conversion to nontoxic shot.

Subpart M—Criteria and Schedule for Implementing Nontoxic Shot Zones for the 1987-1988 and Subsequent Waterfowl Hunting Seasons

§ 20.140 Purpose and scope.

The regulations of this subpart apply to the designation, implementation and enforcement of nontoxic shot zones for waterfowl hunting in the United States for the 1987-1988 and subsequent hunting seasons. The regulations of this Subpart do not apply to the issuance of regulations under Part 21 of this title or under Subparts A through J and L and N of this part.

§ 20.141 Definitions.

As used in this subpart:

(a) "Nontoxic Shot" means any shot-type that does not cause sickness and death when ingested by migratory birds as determined by criteria established under § 20.134. The only nontoxic shot currently approved by the Director, U.S. Fish and Wildlife Service, is steel shot.

(b) "Nontoxic Shot Zones" means all land and water areas within the boundaries of the United States where the use of nontoxic shot is required for waterfowl hunting. A zone may be all or part of a county designated and/or established for nontoxic shot use.

(c) "Waterfowl" means the Anatidae (ducks, geese [including brant], and swans) and coots (*Fulica americana*).

§ 20.142 Applicability.

This subpart applies to persons of all ages engaged in waterfowl hunting in the established nontoxic shot zones and to all of the boroughs, counties, or parishes within the separate States, without exception. Possession and use of nontoxic shot (including shotshells and loose shot for use in muzzleloading), for all legal gauges of shotguns, is required for waterfowl hunting in

nontoxic shot zones. The Secretary of the Interior, acting through the Fish and Wildlife Service, will not open a zone to waterfowl hunting where the Fish and Wildlife Service is prevented from establishing the zone as a nontoxic shot zone under the criteria of this subpart.

§ 20.143 Criteria and schedule for conversion to nontoxic shot.

The criteria and procedures specified below will be followed in the conversion nationwide to the use of nontoxic shot for waterfowl hunting. As of the 1991-1992 season, nontoxic shot will be required in all waterfowl hunting in the United States.

(a) Beginning in the 1987-1988 waterfowl hunting season, implementation of nontoxic shot zones is on a decremental basis with regard to the intensity of average annual waterfowl harvest per square mile of a particular county; the initial harvest level triggering monitoring/conversion is 20 or more birds per square mile, decreasing by 5 birds per square mile each successive waterfowl hunting season until the nationwide ban season is reached in 1991-1992. Data on average annual waterfowl harvest are from Carney et al. 1983; data on county size have been obtained from the U.S. Bureau of the Census. Table I illustrates the schedule for conversion to nontoxic shot.

TABLE I.—SCHEDULE FOR MONITORING AND/OR CONVERTING COUNTIES TO NONTOXIC SHOT ZONES FOR HUNTING WATERFOWL

Average annual waterfowl harvest per sq. mi. ** (by county)	Hunting season in which—		
	Monitoring must begin to defer implementation	Qualifying areas converted	Nontoxic shot required in deferred areas
20 or more.....	1985-86	1987-88	1991-92
15 or more.....	1986-87	1988-89	1991-92
10 or more.....	1987-88	1989-90	1991-92
5 or more.....	1988-89	1990-91	1991-92
less than 5.....	1989-90	1991-92	1991-92

* Average harvest is based on Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during 1971-80 hunting seasons. U.S. Fish and Wildlife Service Special Scientific Report—Wildlife No. 254).

(b) If States, through monitoring, demonstrate during annual Fish and Wildlife Service Regulations Committee meetings that neither of the following two decision criteria are met in a county scheduled for conversion to a nontoxic shot zone, that conversion can be deferred until (but not beyond) the 1991-92 hunting season (monitoring of the latter must include a sample of at least

100 birds of waterfowl species susceptible to lead poisoning):

(1) Dead waterfowl; 3 or more individual specimens confirmed as lead-poisoned during the monitoring year, nor

(2) Ingested shot in gizzards; 5 percent or greater of the sample have gizzards with 1 or more lead shot, and

(i) Liver lead; 5 percent or greater of the sample have livers with concentrations of lead 2 ppm or higher (wet weight), or

(ii) Blood lead; 5 percent or greater of the sample have blood with concentrations of lead 0.2 ppm or higher (wet weight),

(iii) Protoporphyrin; 5 percent or greater of the sample have blood with protoporphyrin concentrations of 40 ug/dl or higher.

(c) Established nontoxic shot zones will not be eligible for deferral or rescission from conversion in any manner.

(d) There is no deferral past the 1991-1992 nationwide conversion year. States may elect to forgo monitoring and/or otherwise convert to nontoxic shot zones on an accelerated basis, i.e., less than a county, countywide or statewide.

(e) States may accelerate conversion on less than a county basis for purposes of completing a biological or enforcement/management unit; however, the minimum conversion schedule (set out in the June, 1986, Final Supplemental Environmental Statement on the use of lead shot for hunting migratory birds in the United States, Appendix N) will be adhered to.

(f) Where a portion, but not all, of a county is included in nontoxic shot zones for the 1986-87 or later waterfowl hunting season, the remainder of the county will convert in the year that it would otherwise be converted on the basis of its total county waterfowl harvest density.

(g) When a county is converted to nontoxic shot status under this paragraph, it will be added to the list of nontoxic shot zones contained in § 20.108 and all the prohibitions of § 20.21(j) will apply.

Dated: October 24, 1986.

William P. Horn,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-26291-Filed 11-20-86; 8:45 am]

BILLING CODE 4310-55-M



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EDWIN W. EDWARDS
GOVERNOR

November 26, 1986

Honorable William Guste
Attorney General's Office
P. O. Box 94005
Baton Rouge, LA 70804-9005

RE: Goose Creeping Regulations

Dear General Guste:

On July 11, 1986, the Louisiana Wildlife and Fisheries Commission passed the enclosed regulation prohibiting the "creeping" of geese (attached, language highlighted). On October 21, 1986, the House of Representatives, Natural Resources Subcommittee and Oversight met and rejected this regulation per the letter of Vice-Chairman Ullo attached hereto.

Among the reasons cited by the Subcommittee was the failure to cite statutory or constitutional authority, a deficiency which can be cured. The remaining objections were to the effect that the "proposed rule is contrary to applicable provisions of law and of the constitution" and that "it should be presented as proposed legislation and not as a proposed rule".

The 1974 Louisiana Constitution Article IX, Section 7 vest control and supervision of the wildlife of the state in the Louisiana Wildlife and Fisheries Commission. This section goes on to state that "the functions, duties and responsibilities of the commission, and the compensation of its members, shall be provided by law".

R.S. 56:1A places the wildlife of the state under the supervision and control of the Commission for the purposes of protecting, conserving and replenishing the natural resources of the state.

R.S. 56:2A vests the Commission with the sole authority to establish definite management programs and policies and to formulate and determine the wisdom and efficacy of the policies, plans, rules, regulations and proceedings of the Commission.

R.S. 56:3A vests ownership and title to all wild birds in the state under the exclusive control of the Commission.

R.S. 56:6(10) states that the Commission shall adopt rules and regulations not inconsistent with the provisions of Part I of Chapter I of Title 56 for the comprehensive control of birds, shellfish, finfish and wild quadrupeds.

R.S. 56:6(13) provides that the Commission shall protect and propagate all species of birds and game of whatever description.

R.S. 56:115A provides as follows:

"The Commission is hereby specifically authorized, directed, and empowered to fix, approve, and adopt seasons, bag limits, and possession limits and to establish other rules and regulations for the hunting, taking, possession, or protection of any species or sex of wild quadruped and wild birds, in any specified locality or localities of the state. Such rules and regulations shall have the full force and effect of law to the same extent as statutory laws."

Please note that R.S. 56:115B provides the penalty for violation of a Commission rule or regulation.

R.S. 56:123A provides in pertinent part:

"The Commission may at any time declare closed seasons or otherwise restrict hunting if it deems it advisable in the interest of wildlife management."

Additionally, please note that R.S. 56:123B contemplates in pertinent part that Wildlife and Fisheries will specify the manner of taking of migratory game birds. "No person shall take, even at the time and in the manner specified and fixed by said department (sic), or in the aggregate during the open season, a greater number of migratory game birds than specified under federal and state regulations".

It would appear that Subcommittee's report flies in the face of the above cited constitutional and statutory authority which clearly gives the Commission the authority to set restrictions on hunting of migratory game birds and to

prescribe their manner of taking, more specifically, in this instance to prohibit the method of hunting known as "creeping".

An almost identical issue was addressed by our Supreme Court in 1984. In State v. Davis, 448 So. 2d 645, the Court addressed the validity of a Commission regulation setting out which animals may and may not be hunted during clearly specified seasons. In important language on page 650, the Court stated that both the establishment of the Commission and the grant of authority to the legislature to delineate the powers of the Commission were created by the Constitution. Thus the legislative delegation of power to the Commission to promulgate the regulations in question was proper and constitutional, therefore valid. It is our contention that the above authority clearly addresses the concerns of the subcommittee.

In any event, we would request an opinion from your office on the above subject matter, namely i.e. (1), on the issue of whether the Commission's regulation prohibiting goose creeping exceeded the constitutional and statutory authority of the Commission and therefore, (2) whether the prohibition should more properly have been legislation rather than a regulation.

By copy of this letter, we are informing Committee Chairman Clyde Kimball, Subcommittee Chairman Chris Ullo and Committee Council Wade Adams of our request so that they may have an opportunity to provide you their thoughts on this issue to the extent they deem appropriate.

As your ruling could impact the remainder of the present hunting season, your prompt attention to this request is appreciated.

Sincerely,


J. Burton Angelle

cc: Clyde Kimball
Chris Ullo
Wade Adams



LOUISIANA HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES

Box 44486, Capitol Station
Baton Rouge, Louisiana 70804
Telephone: (504) 342-3393

Rep. Clyde W. Kimball
Chairman

Rep. J. Chris Ullo
Vice Chairman

Robert E. Hosse
Research Analyst

W. Wade Adams
Attorney

Tracy Caldwell
Secretary

RECEIVED
SECRETARY

Don Finkett

October 22, 1986

Mr. J. Burton Angelle
Louisiana Department of Wildlife and Fisheries
P. O. Box 15570
Baton Rouge, Louisiana 70895

Re: Notice of Approval/Disapproval
Proposed Rule Changes
Louisiana Department of
Wildlife and Fisheries

Dear Mr. Angelle:

Attached is a copy of the Notice of Approval/Disapproval which was forwarded this date to the State Register for publication. The changes listed thereon, which were rejected by the House Natural Resources Subcommittee on Oversight on October 21, 1986 are explained in the copy of the notification, also attached, which was received by the Committee from the Louisiana Department of Wildlife and Fisheries.

Sincerely,

Wade Adams

Wade Adams
Staff Attorney

REH:ch
Attachments



LOUISIANA HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES

Box 44486, Capitol Station
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Telephone: (504) 342-7393

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Rep. J. Chris Ullo
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Robert E. Hosse
Research Analyst

W. Wade Adams
Attorney

Tracy Caldwell
Secretary

Legislature of Louisiana
House of Representatives
House Natural Resources Subcommittee on Oversight
October 21, 1986

Pursuant to the provisions of R.S.49:968, the House of Representatives Natural Resources Subcommittee on Oversight met on October 21, 1986 and reviewed certain proposed rules by the Louisiana Wildlife and Fisheries Commission to prohibit a method of hunting wild geese known as "crawling or creeping" for which notice of intent was published in the September Louisiana Register with the following results:

1) No determination was made regarding whether the rule change was within the intent and scope of the enabling legislation because no such specific legislation was cited to the subcommittee.

2) It was determined that the proposed rule is contrary to applicable provisions of law and of the constitution. There was no statutory or constitutional authority cited to the subcommittee.

3) No determination was made regarding the merit of the rule change.

4) The subcommittee determined that the rule change was unacceptable because it should be presented as proposed legislation and not as a proposed rule.

Rejected by a vote of 5-0.

Attached is a copy of the proposed rule. In accordance with R.S. 49:968(F) copies of this report are being forwarded this date to the governor, the Wildlife and Fisheries Commission, and the State Register.

J. Chris Ullo

Vice-Chairman

House Natural Resources Committee
Subcommittee on Oversight

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES
Louisiana Wildlife and Fisheries Commission

The Louisiana Wildlife and Fisheries Commission hereby expresses intent to prohibit a method of hunting wild geese known as "crawling or creeping." This method of approaching or stalking feeding or resting flocks of wild geese has been abused resulting in excessive kills and crippling of wild geese many of which remain un-retrieved and wasted. The Commission at its regular scheduled meeting July 9, 1986 in Baton Rouge, Louisiana took action which was supported by conservation organizations and law enforcement personnel to curb further waste of our valuable migratory bird resources. This change in hunting methods permitted by law will be duly noted in the Department's 1986-87 Migratory Bird Hunting Regulations Pamphlet.

Interested persons may submit written comments regarding the proposed rule until September 1, 1986 to Hugh Bateman, Chief, Game Division, P.O. Box 15570, Baton Rouge, LA 70805

J. Burton Angelle
Secretary

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment.

- (A) Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment).

The proposed rule would make approaching, stalking or creeping feeding or resting migratory wild geese of any species or number for the purpose of taking (hunting, killing) illegal. The definition of take in current state law Title 56 means in its different tenses, the attempt or act of hooking, pursuing, netting, capturing, netting, capturing, snaring, trapping, shooting, hunting, wounding or killing by any means or device.

- (B) Summarize the circumstances which require this action.

The La. Wildlife and Fisheries Commission has become aware that some unscrupulous hunters using the ground stalking method of crawling or creeping up to large flocks of feeding or resting wild geese are shooting into these geese resulting in excessive kills and crippling losses. This method of hunting has become unacceptable to sportsmen and conservation organizations and the Commission is taking this action to curb any further abuse of this practice.

The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

None

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

None

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

None

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

None



1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COSTS	FY 85-86	FY 86-87	FY 87-88
PERSONAL SERVICES OPERATING EXPENSES PROFESSIONAL SERVICES OTHER CHARGES EQUIPMENT	None	None	None
TOTAL	None	None	None
MAJOR REPAIR & CONSTR.			
POSITIONS (#)			

2. Provide a narrative explanation of the costs or savings shown in "A", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

N/A

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 85-86	FY 86-87	FY 87-88
STATE GENERAL FUND AGENCY SELF-GENERATED FEDERAL FUNDS OTHER (Specify)	None	None	None
TOTAL	None	None	None

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

None

2. Indicate the sources of funding of the local governmental unit which will be

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase or (decrease) in revenues can be anticipated from the proposed action? **None**

REVENUE INCREASE/DECREASE	FY 85-86	FY 86-87	FY 87-88
STATE GENERAL FUND	None	None	None
AGENCY SELF-GENERATED	None	None	None
RESTRICTED FUNDS*	None	None	None
FEDERAL FUNDS	None	None	None
LOCAL FUNDS	None	None	None
TOTAL	None	None	None

* Specify the particular fund being impacted

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

None

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

An unknown number of persons who hunt migratory wild geese in Louisiana would be prohibited from using the "ground stalk" method (known as creeping) of approaching resting or feeding geese. There are about 75,000 persons who hunt geese each year in Louisiana and a small fraction of that number would be impacted by the proposed rule.

- B. Also provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

There is no basis of information for providing any estimate of revenue impact that would result from the proposed rule change.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

- A. Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There is no basis of information for providing any estimate of impact on competition or employment in either the public or private sector that would result from this rule change.

November 18, 1986

Delapost
316 Chartres
New Orleans, LA

Attn: Mr. Cusimano

Below is a list of the people who will be needing rooms for the Louisiana Department of Wildlife and Fisheries and Wildlife and Fisheries Commission meeting on Thursday and Friday, December 4-5, 1986. *These rooms are needed the night of Thursday, Dec 4th, with the exception of Dr. Cappel*

Dr. & Mrs. Cappel-Also needs room on Wednesday, 12/3/86
Dr. & Mrs. Don Hines
Mr. & Mrs. Lyle Crain
Mr. & Mrs. George Gray
Mr. Bill Gray
Mr. & Mrs. Bill Whitaker
Mr. & Mrs. Mark Roberts
Mr. & Mrs. Dale Vinet
Mr. & Mrs. Joe Palmisano
Mr. Corky Perret *cancel 12-1-86*
Mr. & Mrs. Joe L. Herring
Mr. & Mrs. J. Burton Aggelle
Mr. & Mrs. Hugh Bateman
Mr. & Mrs. Johnnie Tarver
Mr. & ~~Bob~~ Bennie Fontenot *single*
Mr. & Mrs. Bob Dennie

I will let you know as soon as possible if some of these rooms are not needed. Thanks very much for your help.

Paula Callais